

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MM Docket No. 94-131

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In the Matter of

Amendment of Parts 21 and 74 of the Commission's
Rules With Regard to Filing Procedures in the
Multipoint Distribution Service and in the Instructional
Television Fixed Service

and

Implementation of Section 309(j) of the
Communications Act - Competitive Bidding

REPLY

The Wireless Cable Association International, Inc. ("WCAI"),^{1/} by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules, hereby submits its reply to the Response to Petition for Reconsideration and Clarification filed by SR Telecom Inc. ("SR") and to the Consolidated Comments and Opposition submitted by Bell Atlantic Corp. ("Bell Atlantic").

I. SR'S FILING IS INAPPROPRIATE FOR CONSIDERATION AT THIS TIME.

WCAI is opposed to the request of SR that the Commission, at this late juncture, establish policies to govern the use of MDS channels for wireless local loop service. While

^{1/}WCAI is the trade association of the wireless cable industry. Its members include licensees in the Multipoint Distribution Service ("MDS") and the Instructional Television Fixed Service ("ITFS"), the operators of virtually every wireless cable system in the United States, program vendors and equipment manufacturers. WCAI has been an active participant throughout this proceeding, submitting formal comments and reply comments in response to the *Notice of Proposed Rule Making* and a Petition for Reconsideration and Clarification of the *MDS Auction Order*.

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WCAI suspects that the time will soon come when marketplace demand compels wireless cable operators to offer a variety of broadband video, voice and data services, the record in this proceeding is grossly inadequate to permit consideration of the policies that should govern use of MDS spectrum for non-video service offerings.

At the outset, SR's submission is procedurally improper. Significantly, SR did not file a timely petition seeking reconsideration or clarification of the *Report and Order* in this proceeding (the "*MDS Auction Order*").^{2/} Instead, during the phase of this proceeding reserved for the filing of oppositions to timely-filed petitions, SR asks the Commission to make sweeping alterations to the *MDS Auction Order*. While SR has denominated its filing as a "response" to the Petition for Reconsideration and Clarification filed by United States Wireless Cable, Inc. ("USWC"), it is a transparent late-filed request for rule changes that go far beyond the scope of USWC's filing. In its Petition, USWC urged the Commission to clarify that digital video services will be permitted along the lines of the Petition for Declaratory Ruling filed by WCAI and others that is currently pending before the Commission in Docket No. DA 95-1854.^{3/} USWC's filing -- which itself seems to go beyond the scope of a proceeding initiated to develop new rules to govern the licensing of MDS stations -- can hardly serve as a "hook" that will permit consideration of the myriad issues raised by SR's

^{2/}*Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, FCC 95-230 (rel. June 30, 1995)[hereinafter cited as "*MDS Auction Order*"].

^{3/}See Petition of United States Wireless Cable for Reconsideration and Clarification, MM Docket No. 94-131 and PP Docket No. 93-523, at 1-2 (filed Aug. 16, 1995).

late-filed submission. Had SR wanted to seek clarification, it should have submitted an appropriate pleading by the August 16, 1995 due date for petitions for reconsideration of the *MDS Auction Order*.^{4/} Having failed to do so, SR can hardly ask the Commission to consider its proposal now. See, e.g. *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 4 FCC Rcd 6029, 6033 n. 53 (1989).

Moreover, even were SR's proposal timely, the record in this proceeding is inadequate to permit Commission consideration of the issues that will need to be addressed before MDS channels can be used for local telephony services. Most significantly, SR's filing ignores the most important question that has to be resolved before any new technology can be utilized in the MDS and the ITFS bands -- what interference protection rules will govern? While the Commission has consistently permitted new technologies to be employed in these bands, it has always done so in a manner that precludes harmful electrical interference to incumbents.^{5/}

^{4/}SR can hardly plead ignorance, however. Although SR did not file any formal or informal comments in response to the *Notice of Proposed Rulemaking* that commenced this proceeding, it made numerous *ex parte* presentations to the staff in the days before the *MDS Auction Order* was adopted. One can only speculate as to why SR refrained from submitting a petition for reconsideration or clarification of the *MDS Auction Order*.

^{5/}See, e.g. *Amendment of Part 74 of the Commission's Rules and Regulations in regard to the Instructional Television Fixed Service*, 98 F.C.C.2d 925, 927 (1984)("we are persuaded that ITFS operators should not be restricted to NTSC format"); *General Electric Company*, 61 Rad. Reg. 2d 143 (P&F 1986)(authorizing use of analog video compression technology by ITFS licensees); *General Electric Company, Declaratory Ruling and Order*, (Com. Car. Bur. rel. Aug. 26, 1986)(authorizing use of analog video compression technology by MDS licensees); *Austin Movie and Sports Cable, Inc.*, 4 FCC Rcd 6174 (1989)(authorizing the use of MDS Channel 2A to carry data signals).

Yet, SR has provided no indication whatsoever as to the potential for its two-way, non-NTSC technology to interfere with nearby MDS and ITFS facilities.

SR's approach stands in stark contrast to that taken by WCAI and virtually the entire wireless cable industry in petitioning the Commission for a declaratory ruling to govern the transition of wireless cable to a digital service. In the Petition for Declaratory Ruling filed on July 13, 1995, WCAI and its co-petitioners provided the Commission with a detailed technical exploration of the impact that digital wireless cable will have on the operating environment and discussed the public interest benefits to be achieved by grant of the requested relief. The Commission has issued a *Public Notice* establishing a pleading cycle affording interested parties an opportunity to submit comments and reply comments in connection with the Petition. Rather than address SR's proposal here, the Commission should invite SR to submit its own detailed petition (which should include proposed interference standards and include test data supporting those standards), and then, if SR accepts that invitation, establish a pleading cycle that will elicit a full and complete record.

II. BELL ATLANTIC'S SUGGESTION THAT THE COMMISSION UNDULY LIMIT GRANDFATHERING UNDER PARAGRAPH 57 OF THE MDS AUCTION ORDER IS WITHOUT MERIT.

In its Petition for Reconsideration and Clarification, WCAI urged the Commission, among other things, to clarify that under Paragraph 57 of the *MDS Auction Order*, grandfathered status will attach to any MDS facility that is authorized or proposed prior to September 15, 1995 and has, or proposes to have, a power flux density ("PFD") exceeding

-73 dBw/m² at the border of its expanded protected service area ("PSA").^{6/} As WCAI explained at the time, although it appeared that this was the Commission's intent, there is sufficient ambiguity in the language of Paragraph 57 that clarification is called for.

Bell Atlantic would now have the Commission greatly restrict the grandfathering provisions of Paragraph 57 in a manner wholly inconsistent with the spirit of the *MDS Auction Order*. In opposing WCAI's request for clarification, Bell Atlantic calls for the Commission to limit grandfathered status only to those facilities that proposed to utilize directional antennas prior to the June 30, 1995 release date of the *MDS Auction Order*.^{7/} Bell Atlantic contends, albeit without any factual support, that absent adoption of its proposed restrictions, there could be "an unwarranted 'spectrum grab' by numerous MDS stations, which would leave the BTA virtually worthless."^{8/}

At the outset, it appears that Bell Atlantic misses the entire point of the *MDS Auction Order*. The *MDS Auction Order* establishes beyond peradventure that the Commission's goal is not to boost the value of the BTA authorizations that will be auctioned. Rather, the Commission has stated with crystalline clarity that its "principal objective in this proceeding is to allow incumbents to continue existing operations without objectionable interference from

^{6/}See Petition of Wireless Cable Ass'n Int'l for Reconsideration and Clarification, MM Docket No. 94-131 and PP Docket No. 93-523, at 27-28 (filed Aug. 16, 1995)[hereinafter cited as "WCAI Petition"].

^{7/}See Consolidated Comments and Opposition of Bell Atlantic Corp., MM Docket No. 94-131 and PP Docket No. 93-253, at 8-9 (filed Sept. 13, 1995)[hereinafter cited as "Bell Atlantic Comments"].

^{8/}*Id.* at 8.

new MDS operations and to allow them sufficient flexibility to modify their facilities to respond to market forces.”^{9/} Thus, the fact that grandfathering may reduce the value of the BTA authorization to the auction winner should play no role in the decisional process.

To achieve the stated objective of allowing incumbents sufficient flexibility to modify their facilities, the Commission delayed the effective date of the technical rules adopted in the *Second Order on Reconsideration* until September 18, 1995, delayed the effective date of the *MDS Auction Order* until September 15, 1995, and afforded ITFS licensees an opportunity to propose major modifications to their facilities prior to the September 18, 1995 effective date of the technical rules adopted in the *Second Order on Reconsideration*.^{10/} Contrary to Bell Atlantic’s assertion, there is absolutely nothing in the *MDS Auction Order* to suggest while the Commission was generously granting this period for modifications of existing facilities, it intended that only those proposals on file by the June 30, 1995 release date of that *MDS Auction Order* would be grandfathered under Paragraph 57.^{11/}

Moreover, Bell Atlantic’s stated fear that MDS licensees would propose stations designed to take advantage of the grandfathering provisions of Paragraph 57 appears misplaced. An informal canvas of the industry suggests that few, if any applications that would fall within the scope of Paragraph 57 were filed between the June 30, 1995 release date

^{9/}*MDS Auction Order*, at ¶ 56.

^{10/}“Notice of Limited Period To File Instructional Television Fixed Service Applications For Major Changes In Existing Facilities,” *Public Notice*, Report No. 23564A (rel. Aug. 3, 1995).

^{11/}*See Bell Atlantic Comments*, at 9.

of the *MDS Auction Order* and September 15. To the extent that any of those applications were filed for improper purposes, Bell Atlantic or any other interested party will have an opportunity to petition for their denial. However, to the extent that those applications propose modifications that advance the public interest, there is absolutely no valid reason why they should be denied grandfathered status under Paragraph 57.

Finally, Bell Atlantic misstates WCAI's Petition when it claims that WCAI has called for the Commission to extend grandfathering to stations using omnidirectional antennas.^{12/} While WCAI did not specifically limit its discussion to directional antennas, that is because the *MDS Auction Order* has properly concluded that only directional antenna systems are capable of yielding a PFS in excess of -73 dBw/m² at the boundary of the 35 mile PSA given

^{12/}See *id.* at 8-9.

the radiated power limitations to which MDS and ITFS stations are subject.^{13/} Thus, while WCAI believes as a matter of principle that omnidirectional and directional antennas should be treated identically under Paragraph 57, the laws of physics dictate that only those stations employing directional antennas will exceed the -73 dBw/m² PFD limit at the PSA boundary and be eligible for grandfathered status.

Respectfully submitted,

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^{13/}See *MDS Auction Order*, at ¶¶ 53, 57.

CERTIFICATE OF SERVICE

I, Deanna L. Susens, hereby certify that the foregoing Reply was served this 25th day of September 1995, by depositing a true copy thereof with the United States Postal Service, first-class postage prepaid, addressed to the following:

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